Canadian Forces Grievance Board | Comité des griefs des Forces canadiennes

CANADIAN FORCES GRIEVANCE BOARD

Annual Report 2003

Canada

March 31, 2004

The Honourable David Pratt
Minister of National Defence
National Defence Headquarters
MGen Georges R. Pearkes Building
101 Colonel By Drive
Ottawa, Ontario
K1A 0K2

Dear Minister:

Pursuant to section 29.28(1) of the *National Defence Act*, I hereby submit the 2003 annual report on the activities of the Canadian Forces Grievance Board for tabling in Parliament.

Yours truly,

Diane Laurin
Chairperson

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MESSAGE FROM THE CHAIRPERSON

2003 will undoubtedly be recognized as a milestone year for the Canadian Forces Grievance Board. A definite turning point in its existence, the past year was replete with key events that, amongst others, affected the Board's immediate activities, but which will also influence its future as an organization.

One such event involved Mr. Paul-André Massé, the Board's founding Chairperson, who left this position in June. Mr. Massé was a guiding force behind the Board's initial growth and development, and his leadership was instrumental in ensuring a solid foundation in accordance with the principles of procedural fairness and transparency as they apply to the grievance process.

The year was also marked by the first independent review of Bill C-25 *(An Act to Amend the National Defence Act)*, and the Board played an active part in the exercise. The Right Honourable Antonio Lamer, former Chief Justice of the Supreme Court of Canada, conducted the review and the final report (Lamer Report) was tabled in Parliament on November 5, 2003.

The outcome of this review, including the report that followed, can best be described as a most positive and important step towards improving the legislation and the grievance review process. The Lamer Report contains no less than nineteen recommendations aimed at advancing the grievance review process, five of which were proposed by the Board. That which is of particular significance to the Board and the members of the Canadian Forces is the report's conclusion that the grievance process is sound, all the while highlighting the continuing necessity of an independent organization mandated to review military grievances.

Perhaps the real defining moment for the Board occurred in late summer when we conducted a detailed review of our operations. With the arrival of a new Executive Director and a Director, Grievance Analysis and Operations, to the management team, the Board took steps aimed at streamlining its grievance process. The team rose to this challenge and developed a strategy to better align its resource allocation with the Board's business line —reviewing grievances and submitting findings as well as recommendations to the Chief of the Defence Staff.

We decided that reducing the Board's grievance case backlog and achieving a steady-state operation would remain our primary objective. To achieve this, the Board began by conducting a thorough review of its governance framework, overall organizational structure, administrative and business practices. As a result, we developed an operational plan that was put into effect last September. Its purpose is to significantly reduce the case backlog and bring the Board to a steady-state operation by December 2004. The progress we've made to date assures us that this objective can be met.

Furthermore, I firmly believe in the principles and practices of modern comptrollership; towards this end the Board will continue to implement a management improvement action plan in order to ensure the effective stewardship of its resources.

The strides we have made this past year are in no small way attributable to the dedication and commitment of the Board's employees, our most valuable resource, and I thank them. I would also like to take this opportunity to underline the exceptional work of our Board Members. The expertise needed to make findings and recommendations within the complex environment of the Canadian Forces involves many areas of the law and our Members are faced with issues that had previously never been submitted to an external review process. Their role, therefore, is crucial to the success of the Canadian Forces Grievance Board as an administrative tribunal.

Today we bid farewell to our infancy and usher in a new era, one in which our corporate infrastructure and management frameworks will effectively support our number one priority: to attain a steady-state of operation so that the Board may review grievances in the timeliest manner possible. The Canadian Forces Grievance Board team appreciates the opportunity to work in cooperation with the Department of National Defence and the Canadian Forces for the purpose of improving the grievance process to the benefit of all Canadian Forces members.

I am most proud of our accomplishments as a young organization and my focus is to see that the Board continues to be an instrument of change for the military administrative justice system.

CHAPTER 1

THE CANADIAN FORCES GRIEVANCE BOARD

Mission

"To review grievances in order to render fair and impartial findings and recommendations in a timely and informal manner to the Chief of the Defence Staff and the grievor."

History

The Canadian Forces Grievance Board (Board) is an independent administrative tribunal with quasi-judicial powers, created in accordance with amendments made to the *National Defence Act* (NDA) in December 1998. These amendments were the result of several studies and inquiries, such as the Special Advisory Group and the Somalia Commission of Inquiry, that looked into the broader issue of military justice. In response to the recommendations made by the studies, the legislative changes to the NDA were aimed at modernizing and strengthening the military administrative justice system. This included the creation of the Board and the distinctive role it was given with regard to the Canadian Forces' grievance review process.

The Board officially began operations on June 15, 2000, when it received its regulatory authority. It is external to and independent of the Canadian Forces (CF) and the Department of National Defence (DND), with the statutory mandate to review military grievances and to submit findings and recommendations to the Chief of the Defence Staff (CDS).

The Board conducts objective and transparent reviews of grievances with due respect to fairness and equity for each member of the CF, regardless of rank or position. It ensures that the rights of military personnel are considered fairly throughout the process and that its Board Members act in the best interest of the parties concerned. The findings and recommendations it issues are not only based in law but form precedents that may facilitate change within the CF. The Board's ultimate objective is to contribute to the effectiveness of the grievance review process within the military administrative justice system.

Canadian Forces Grievance Board Context

The Role of Administrative Tribunals

Administrative tribunals, such as the Board, provide a mechanism outside the courts for the expeditious resolution of complex and particular matters. Acting independently of the government, tribunals have the power to make decisions through enabling statutes of Parliament. Such powers permit the tribunal to determine the existence and scope of rights

and obligations in a particular field of expertise and these are to be exercised in accordance with the public interest and the specific circumstances prevailing in the tribunal's area of activity.

The Board is an administrative tribunal with powers of a quasi-judicial nature and a mandate to make findings and recommendations on important labour issues in the context of military law. Labour relations in the military are governed by the *National Defence Act* and related regulations. As such, members of the military are subject to conditions of work and rules of employment that are essentially regulated and not negotiated, thus the legal principles that would normally apply to an employer-employee relationship cannot always be used to resolve a military grievance.

As an administrative tribunal designed to review grievances, the Board must ensure that its recommendations comply with the law and can be implemented in accordance with its enabling legislation, relevant human rights legislation and the *Canadian Charter of Rights and Freedoms*. Canadian courts have also rendered several decisions on a wide range of subjects and Board Members must keep abreast of these, as well as the current *Queen's Regulations and Orders for the Canadian Forces* (QR&O), the *Canadian Forces Administrative Orders* (CFAO) and Treasury Board policies, all of which are used in the course of analyzing grievances and developing findings and recommendations.

The Types of Grievances Referred to the Canadian Forces Grievance Board

Under Chapter 7.12 of the QR&O:

(1) The Chief of the Defence Staff shall refer to the Grievance Board any grievance relating to the following matters:
   (a) administrative action resulting in the forfeiture of, or deductions from, pay and allowances, reversion to a lower rank or release from the Canadian Forces;
   (b) the application or interpretation of Canadian Forces policies relating to expression of personal opinions, political activities and candidature for office, civil employment, conflict of interest and post-employment compliance measures, harassment or racist conduct;
   (c) pay, allowances and other financial benefits; and
   (d) the entitlement to medical care or dental treatment.

(2) The Chief of the Defence Staff shall refer every grievance concerning a decision or an act of the Chief of the Defence Staff in respect of a particular officer or non-commissioned member to the Grievance Board for its findings and recommendations.

The CDS also has the discretionary power to refer other types of grievances to the Board for review.

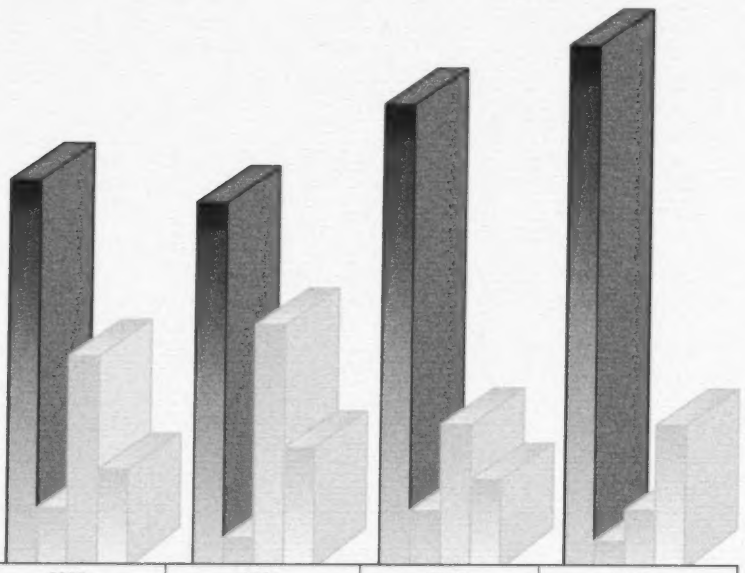
An Overview of Grievance Categories Received from 2000 to 2003

Entering into its fourth year of operations, the Board has a caseload history that allows for a comparative look at the types of grievances it has received over the years. While the Board is unaware of any analysis undertaken to this effect, reviewing the breakdown according to grievance category may eventually help the appropriate authorities to flag emerging or declining trends on labour relations issues facing the Canadian Forces.

For example, **Figure I** illustrates the percentage breakdown of files according to grievance category that the Board has received since 2000. The percentages per year are in relation to the Board's total case inventory for that same year. The number of cases received in two of the four grievance categories have remained relatively constant over the four years, with the exception of financial cases, which have increased since 2001, and harassment cases, which have declined since 2002.

Figure I

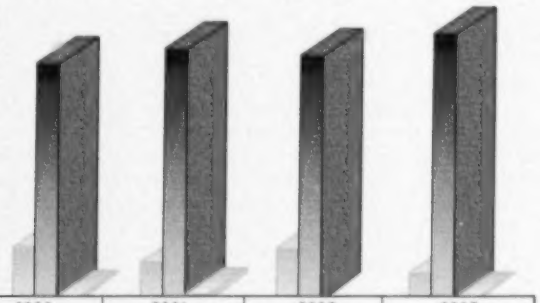
DISTRIBUTION OF GRIEVANCE CATEGORIES BY YEAR REFERRED TO THE BOARD



	2000	2001	2002	2003
Financial	51%	48%	61%	69%
General	8%	4%	8%	4%
Harassment	28%	32%	19%	8%
Release	13%	16%	12%	19%

Figure II

BREAKDOWN OF GRIEVANCES ACCORDING TO CF COMPONENT AND YEAR REFERRED TO THE BOARD

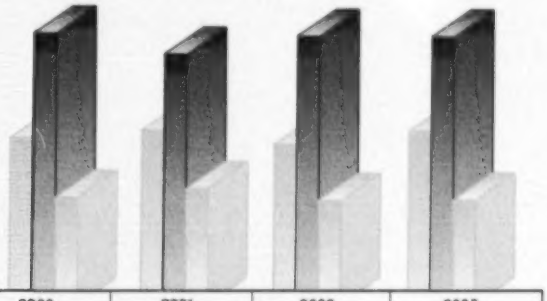


	2000	2001	2002	2003
Primary Reserve	19%	13%	19%	10%
Regular Force	79%	84%	81%	89%
Supplementary Reserve	2%	3%	0%	1%

Figure II provides a different perspective: a breakdown of grievances received according to the three CF components, from 2000 to 2003.

Figure III

BREAKDOWN OF GRIEVANCES ACCORDING TO CF ELEMENT AND YEAR REFERRED TO THE BOARD



	2000	2001	2002	2003
Air Force	30%	32%	30%	32%
Army	50%	47%	50%	50%
Navy	20%	21%	20%	18%

Figure III breaks down the percentages of grievances received according to the CF element; it is interesting to note that the Board's percentages for 2003 and previous years are in relative proportion to the element breakdown found within the CF itself: Air Force 31%, Army 47%, Navy 22%.[1]

[1] Excerpt from October 20, 2003 presentation to the Standing Committee on National Defence and Veterans Affairs (SCONDVA) by Lt Gen. George MacDonald, Vice Chief of the Defence Staff.

CHAPTER 2

2003: A TURNING POINT

This report reflects back on a year of transitory events, several of which played a significant part in bringing about a new organizational reality. Internal to the Board, change came in the form of a restructured management team as well as the development and implementation of a new strategy to improve its operational performance. Externally, the legislative review of Bill C-25[1], the report Mr. Lamer submitted to the Minister of National Defence – *The First Independent Review of the provisions and operation of Bill C-25* (herein referred to as the Lamer Report) and the new office of the Canadian Forces Grievance Authority (CFGA) helped to promote transition.

Key Events: Internal

A New Management Team

Since its start up in June 2000, staff recruitment has hampered the Board's progress in reaching a steady-state operation. Finding the type of highly skilled personnel required to meet its operational goals and retaining employees have proven problematic for various reasons. In addition to staff shortages, in mid-year the Board's founding Chairperson left his position and the Vice-Chairperson, Operations, had to assume the concurrent role of Acting Chairperson.

The Chairperson's departure inevitably effected a change in direction for the Board; it also coincided with the staffing of two integral senior executive positions that up until then had only been staffed intermittently: an Executive Director and a Director, Grievance Analysis and Operations. These two public service positions are vital to the Board's effectiveness, but until the successful candidates had been hired and assumed their respective roles, their absence affected the organization's stability and productivity.

The Executive Director is responsible for ensuring a sound management framework and corporate infrastructure that enables the Board to fulfill its mandate and focus on operations. In turn, the Director, Grievance Analysis and Operations, assisted by the Director, Legal Services, is steward for the Board's key activity and product: grievance analysis and the findings and recommendations sent to the CDS. These new additions to the management team helped bring about a renewed focus on the Board's long-term strategy, and the team as a whole undertook to review the organization's operational efficiency and secure its corporate stability.

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[1] *An Act to amend the National Defence Act and to make consequential amendments to other Acts*, Canada, House of Commons, 1st Session, 36th Parliament, 46-47 Elizabeth II, 1997-98.

The 2003 Operational Plan

The Board was facing a significant challenge as it entered fiscal year 2003-04. It had an insufficient number of employees to deal with its on-going grievance case workload, and it did not have the funding that would allow it to substantially reduce its grievance case backlog, which had been mostly inherited from the grievance review system that was in place prior to when the Board commenced operations in June 2000.

In order to effectively deal with the grievance case backlog, the Board's operational plan was greatly dependent on an effective staffing strategy, the aim of which was to bring the Grievance Analysis and Operations sector to its full strength. Staffing for the core operations positions took place and resourcing for corporate services requirements was put on hold until a mid-term organizational needs analysis had been completed.

Financial and procurement processes, procedures and practices were also streamlined and related accountabilities more clearly defined. In addition, infrastructure support systems were rationalized, both in terms of administrative processes and associated resourcing levels.

Foremost, the Board developed a plan to specifically tackle its grievance case backlog. In August 2003, the then Acting Chairperson, along with the CDS, presented the Minister of National Defence their respective plans outlining how both the Board and the CF/CA would significantly reduce the outstanding grievances in their case inventories by December 31, 2004. These two plans were the result of a collaborative effort between the two organizations to overcome process delays and ensure that the issue of the grievance backlog is appropriately addressed.

A critical requirement of the Board's plan is to maximize the efficiency of its grievance review process in order that a significant backlog does not accumulate again in the future. So while the plan's focus is the backlog, it nonetheless involved streamlining the Board's internal processes relating to the way it deals with grievances. These processes have since proven effective; for example, the grievance review process steps have been reduced, and to the extent possible, a grievance review should be completed within 90 days from the time of receipt at the Board.

The plan's progress to date has not been without its obstacles, some of which affected its initial implementation. When it was put into effect last fall, the Board was still undergoing a major transitional period – a new management team was in the midst of a learning curve while concurrently preparing and implementing an ambitious operational plan. In addition, the Treasury Board submission requesting additional resources was only approved in late November requiring that the Board adjust certain elements of its plan. The hiring of core operations staff was also delayed and as of December 31, 2003, the additional Board Members necessary to deal with the Board's caseload had not been appointed by the Governor in Council.

While the Board was in the process of improving its efficiency on many fronts, the Minister of National Defence released a report from his Advisory Committee on Administrative

Efficiency (August 2003). This report was of interest to the Board since one of the forty-nine recommendations contained therein dealt with the Independent Oversight Organizations that fall under the purview of the Minister of National Defence and whose mandates involve dealing with complaints made by CF members.

The Board supports the philosophy defined in the report in which effective management is the cornerstone of efficient administration for any organization. As has been seen, the Board has implemented a number of improvement measures and it will continue to pursue other avenues to increase efficiency and reduce costs.

In addition to improving its operating efficiency, as part of its Management Improvement Action Plan, the Board made great strides in developing its performance measurement, evaluation and reporting strategies. Consequently, early in the spring of 2004 performance indicators and measures related to the Board's output and planned results will be ready for implementation. Furthermore, the Board plans to conduct a formal, mid-term evaluation in 2004-05, in accordance with the Treasury Board Evaluation Policy requirement regarding the evaluation of new government programs or initiatives.

The government's Management Accountability Framework (MAF) is especially pertinent in relation to the DND report on administrative efficiency. The MAF provides a brief, clear overview of the main elements of good management. The Board will practice effective management by focussing on people and capacity, ensuring rigorous stewardship, valuing and using relevant performance information, and reporting on measurable results.

Key Events: External

The Legislative Review of Bill C-25: The Lamer Report

> *"...as a result of the changes made by Bill C-25, Canada has developed a very sound and fair military justice framework in which Canadians can have trust and confidence."*

On November 5, 2003, the Minister of National Defence tabled the report prepared by the Right Honourable Antonio Lamer, former Chief Justice of the Supreme Court of Canada (www.forces.gc.ca/site/reports/review/index_e.htm). Mr. Lamer was mandated by the Minister to conduct the first independent review of the Bill C-25, the legislation responsible for the creation of the Canadian Forces Grievance Board. The NDA mandates the Minister to conduct an independent review of Bill C-25 every five years; its purpose is to provide the Minister with an impartial review and recommendations that could ultimately influence how Bill C-25 should be changed or amended.

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[1] The Right Honourable Antonio Lamer, *The First Independent Review by the Right Honourable Antonio Lamer P.C., C.C., C.D. of the provisions and operation of Bill C-25, An Act to amend the National Defence Act and to make consequential amendments to other Acts, as required under section 96 of Statutes of Canada 1998, c.35*, 2003, Foreword.

The Board has benefited from a labour relations experience that is unique in the military context. Therefore, this independent review of the NDA represented a rare opportunity for the Board to share the experience and knowledge it has acquired in its role; the comments and recommendations made to Mr. Lamer were designed to enhance the administrative efficiency of the grievance review process.

"The Grievance Board is to be commended for establishing in a relatively short time frame a grievance review process that is recognized as providing well-reasoned and thorough findings and recommendations."[1]

The Lamer Report acknowledged the positive elements of the grievance process, which include being more streamlined with only two-levels of decision-making, as well as the establishment of the Board as an independent and external review mechanism. A total of no less than nineteen recommendations regarding the grievance review process and the Board were made in the report, five of which were submitted by the Board. Further details about these five recommendations can be found in Appendix B.

The focus of the Lamer Report's recommendations for the grievance process relate to five key areas: elimination of the backlog, elimination of delays, improved remedies, enhanced transparency and Canadian Forces Grievance Board powers. Implementation of some of these recommendations is on-going; for example, the Board is currently dealing with issues pertaining to communications with grievors as well as the development of a common methodology with the Canadian Forces to monitor grievances. Further to this, the Board had already streamlined its grievance process as part of its 2003 operational plan.

"While the grievance system clearly needs some work, I am confident that once my recommendations are implemented, a more responsive and efficient grievance system will be established."[2]

In relation to other recommendations made in the report, the Board welcomes several; for example, that the CDS be granted discretion to delegate some of his decisional powers to an impartial and independent person to assist in the expeditious resolution of grievances. Another recommendation that would give the Board the decisional power to review grievances from military judges, who have no recourse within the CF for their grievances, also merits consideration. This recommendation would entail additional jurisdiction and authority for the Board.

The twelve-month limit for a final grievance decision, from the date that a grievance is submitted to a commanding officer to the date of a decision by the CDS or his delegate, is deemed a reasonable recommendation and the Board actively works towards this end. However, the Board may not always be in a position to render findings and recommendations within this time frame. The terms of this particular recommendation need to be assessed against external factors such as procedural fairness, disclosure or public hearings, all of which can be time consuming. Each grievance file is evaluated according to what is necessary to ensure a fair and transparent review.

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[1] Lamer, *The First Independent Review*, p. 92.

[2] Ibid., 111.

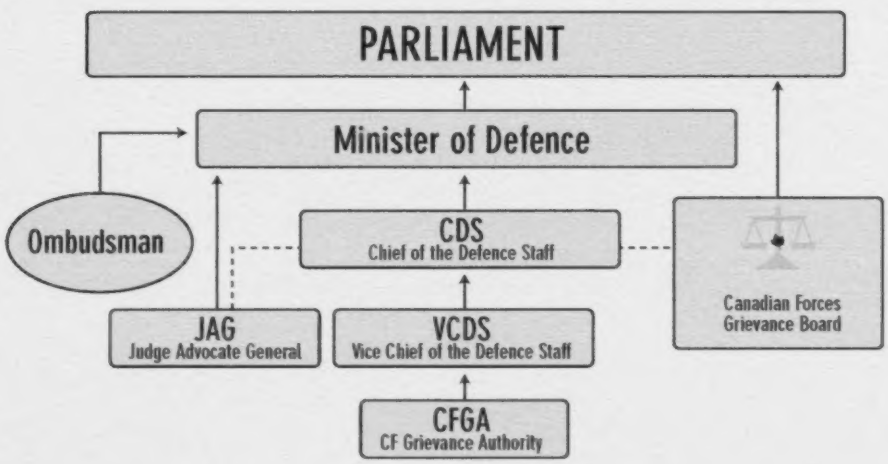
The recommendations proposing the right of grievors to apply for Federal Court review if they have not obtained a final decision within twelve months, and the reimbursement of their legal costs regardless of the outcome at the Federal Court, may have an adverse impact on the grievance system. This is because the Federal Court may not necessarily represent a less expensive or expeditious resolution. As such, the Board believes the advantage for most grievance cases lies with the CF grievance process.

The underlying objectives of the recommendations contained in the Lamer Report are to assist the Board in fulfilling its mandate of ensuring the fair, impartial, informal and expeditious review of grievances, thereby enhancing the grievance process within the CF. The Board will continue to work in collaboration with DND and promote a cooperative and mutual approach to the grievance review process.

The Board will also continue its participation in the legislative review and in the process to amend Bill C-25. In doing so, it will be in a better position to properly assess the impact of its recommendations and the proposed legislative changes on its mandate, Board Members and operations.

The Canadian Forces Grievance Authority

In January 2003, the CF announced that the Canadian Forces Grievance Authority would be responsible for managing the grievance process within the Canadian Forces. Over the course of the year, CFGA staff dedicated to the grievance process rose to 32, with an additional 14 personnel hired to work exclusively on the CF grievance backlog. The CFGA, initially under the authority of the Judge Advocate General (JAG), was moved under the Vice Chief of the Defence Staff (VCDS) in December 2003.



The developments that took place at the CFGA level are important steps to help strengthen the grievance process and deal with grievance process delays and case backlog, given the office's role as the final authority to hear and determine grievances not referred to the Board.

The new office works closely with the Board in a collaborative effort to improve the grievance process as a whole. As noted in the section on *The 2003 Operational Plan*, throughout the year, CFGA officials worked with the Board in order to address legal or administrative issues related to the grievance process and the management of cases. The results of this co-operation were respective operational plans that focussed on accelerating the grievance process and adjudicating the backlog of cases that remain in the system. The Board and the CFGA also developed a common methodology for tracking and classifying grievances, and both organizations meet regularly to share information and provide feedback on their progress.

CHAPTER 3

BOARD OPERATIONS: THE YEAR IN REVIEW

This chapter of the annual report provides an overview of the Board's operational results for the year 2003, including a summary of statistics in relation to grievance review, a comparative look at CDS decisions in relation to Board findings and recommendations and a report on the success of its *Preliminary Neutral Assessment* (PNA) project.

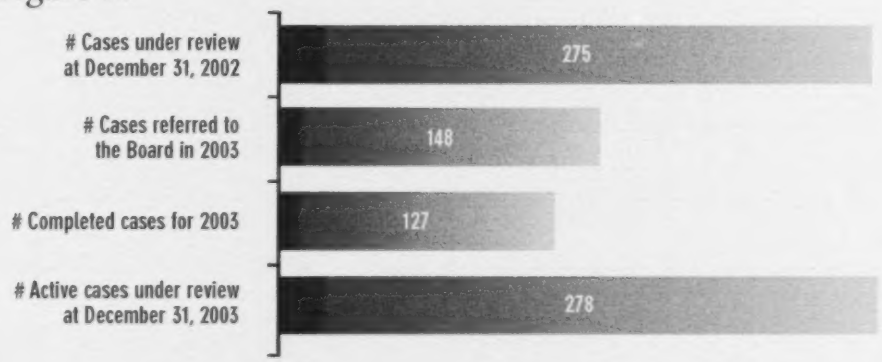
Grievances Statistics for 2003

Despite 2003 being a year of re-alignment in many respects, the Board nonetheless increased its productivity. Between January 1 and December 31, 2003, the Board made 270 recommendations and 447 findings related to 127 grievance cases, up from 120 cases in 2002.

The total number of grievances received at the Board in 2003 was 148. Of that total, 102 dealt with financial matters; 12 with harassment/discrimination; 27 with releases; and 7 with general matters (medical, dental, reversion in rank, etc.) A further breakdown of these grievance categories for the year 2003 can be found in Appendix 2.

Figure IV illustrates the status of the Board's grievance inventory as of December 31, 2003*. At year-end, 278 cases remained at the Board in various stages of review.

Figure IV


Cases under review at December 31, 2002
275
Cases referred to the Board in 2003
148
Completed cases for 2003
127
Active cases under review at December 31, 2003
278

* A common methodology developed with the CFGA in 2003 entailed adjustments with regard to reporting on grievances; grievance statistics from previous years may not be exactly comparable with the current data. For example, on December 31, 2002, 275 grievances remained at the Board, and at that time certain grievances covering a number of issues were accounted for separately. Today all issues from the same grievor are considered a single grievance.

The Board's Systemic Recommendations and CDS Decisions Rendered in 2003

The Board reviews all decisions rendered by the CDS in light of relevant legal principles and assesses their potential impact on future cases. This year, the CDS made written decisions in 164 grievances for which the Board had rendered findings and recommendations over the last three years (not included are the 13 cases accepted by the CDS for Informal Resolution). The CDS partially or fully endorsed the Board's findings and recommendations in 158 of those cases and he disagreed with the Board in only six of his written decisions. The Board considers these results to be encouraging, as they provide a valuable perspective on the organization's work, and especially because one of the strategic/ultimate outcomes of the Board's work is its contribution to the effectiveness of the grievance review process within the CF.

Figure V illustrates the number of CDS decisions rendered in 2003 in comparison to the findings and recommendations rendered by the Board. Of the 73 grievances that the Board recommended be upheld or partially upheld, the CDS supported the Board's findings and recommendations in 74% of the cases. Of the 102 grievances that the Board recommended be denied, the CDS supported the Board's findings and recommendations in 94% of the cases.

Figure V

Board Findings and Recommendations		CDS Decisions Rendered in 2003			
		CDS Supports Board F&R	CDS Partially Supports Board F&R	CDS Accepts CF Informal Resolution	CDS Does Not Support Board F&R
Upheld	41	25	10	*** 2	4
Partially Upheld	21	18	2		
Preliminary Neutral Assessment (PNA) **	11			11	
Denied	102	96	4		2
Withdrawn by the grievor	1	1			
Not Grievable	1	1			
TOTAL	*177	141	17	13	6

* CDS decisions rendered in 2003 relate to grievances for which the Board provided findings and recommendations over the previous three years.

** Preliminary Neutral Assessment is comprised of cases that were upheld or partially upheld for which the CDS accepted the informal resolution. (See p. 18 for more information on PNA project).

*** CF proposed an informal resolution to the grievor.

The Board has also, in the context of individual cases, made some more systemic recommendations to the CDS. For example, where it has identified meritorious claims that could be validated only by policy or regulatory change, or where it has seen a potential or a need for broader ameliorative change in the CF generally, the Board has recommended that the CDS take additional action, beyond his disposition of the individual grievance. The Board's efforts in this respect have garnered, for the most part, a positive response from the CDS.

On numerous issues, the Board in 2003 identified gaps or inequities in policies and regulatory provisions that it considered merited review and it recommended that the CDS ensure that such review be undertaken. The Board has made recommendations for studies to be made, with a view to change, in cases dealing with issues such as the recognition of prior service and experience after a member is again promoted following a relinquishment of rank, the rationalization of benefits accorded to service personnel living in Yellowknife, and the applicable rates of pay on transfer from the Primary Reserve to the Regular Force. In these matters, the CDS has accepted the value of such studies and has ordered them to be undertaken.

More rarely, the CDS has disagreed with the Board on the need for studies and possible changes. For example, when the Board recommended that there be instituted two different forms to deal with release from the CF and transfer within the CF, the CDS disagreed that the current documentation, which uses one form for both release and transfer, was confusing to members or needed to be amended. The Board remains of the view that such a change would be helpful to CF members, and will take notice of whether future cases provide a basis on which to renew this type of recommendation.

With regard to the many other policy and administration issues arising in grievances, the Board has made systemic recommendations to the CDS that he implement change. For example, recommendations regarding such policies governing the consideration of past service of officers when deciding whether to offer new terms of service, and the policy on acting positions "while so employed" have been made by the Board during this past year, but have not yet been decided upon by the CDS.

In certain circumstances, the CDS may be unable to implement recommended reform himself, as only legislative or regulatory change could resolve an unfair situation. In such cases, the Board has voiced recommendations that the CDS pursue legislative or regulatory change. In 2003, the Board made recommendations involving legislative change regarding the *National Defence Act* and the *Canadian Forces Superannuation Act*, and recommended regulatory change regarding such issues as expanding compassionate travel assistance benefits and improving the recognition of prior service in the Reserve on transfer to the Regular Force. The Board will await the developments that come from these recommendations once the CDS has considered them.

The Board is interested in seeing systemic changes take place where they are warranted, with the potential outcome of helping to prevent further grievances of a similar nature. The decisions rendered by the CDS regarding systemic issues identified by the Board provide the Board with valuable feedback on such issues, and assist the Board in the measurement of its performance in the context of its statutory mandate.

Preliminary Neutral Assessment Project

In late 2002, the Board began a *Preliminary Neutral Assessment* project in order to expedite cases meeting certain criteria and which had been in the system a significant amount of time. The project began by retaining 18 grievances from 14 separate grievors that could potentially be resolved through interest-based negotiations. The project involved direct negotiations between a senior officer from National Defence Head Quarters, who was specifically delegated for this project as the CDS' representative, and the Board's designated PNA Officer.

As negotiations evolved, seven grievances were withdrawn and subsequently returned to the grievance process, including five from a single grievor. Of the 11 cases remaining, the CDS fully endorsed all the corrective measures that had been proposed. The PNA project proved quite successful in resolving some longstanding grievances within a relatively short period of time. It permitted grievors whose cases had been selected to participate more fully in the process and to gain a better understanding of how their grievances were being handled. Most grievors expressed a high degree of satisfaction with having a greater level of personal contact with those who were handling their grievances, especially given the fact that they could participate actively in their resolution.

The PNA project also allowed various CF authorities to gain a different perspective of alternative dispute resolution mechanisms and techniques, thus contributing to an enhanced degree of understanding and cooperation between the Board and the various CF authorities responsible for grievance administration.

The Board will continue to consider PNA a viable option for dispute resolution in specific circumstances.

In Conclusion

2003 truly did represent a defining period for the Board. Over the last three years, the organization set ambitious goals for itself, many of which were fulfilled this past year; the Board made progress in addressing delays and the backlog issue and it achieved a level of organizational stability thanks to select corporate initiatives. Its goals for 2004-2005 will be to optimize its operational performance and reach a steady-state operation. This focus will also be consolidated with other corporate objectives, namely performance measurement as part of the Board's Management Improvement Action Plan.

While the Board's everyday work deals with individual grievances, it nonetheless considers the CF as a whole when rendering its findings and recommendations. Going beyond the individual to where the real problem may lie and offering a solution is in harmony with the Board's original vision for its work – that members of the Canadian Forces are confident that the Board's findings and recommendations are objective, timely, fair and impartial, and that the work of the Board has a positive impact on the conditions of work for military personnel and contributes to a better understanding and application of CF regulations, policies, and guidelines.

APPENDIX 1

MISSION, VISION AND VALUES

Mission

To review grievances in order to render fair and impartial findings and recommendations in a timely and informal manner to the Chief of the Defence Staff and the grievor.

Vision

The Board's grievance review skills and expertise will be recognized through the quality of its findings and recommendations.

This vision will be realized when:

- The principles of integrity and fairness guiding the Board create a climate of confidence in members of the Canadian Forces;
- Members of the Canadian Forces are confident that the Board's findings and recommendations are objective, timely, fair and impartial;
- The work of the Board has a positive impact on the conditions of work for military personnel and contributes to a better understanding and application of regulations, policies, and guidelines;
- Other public agencies, in Canada and abroad, consult the Board regarding their own grievance management and review processes.

Organizational Values

- Provide efficient quality service that is impartial and fair;
- Treat individuals with respect and professionalism;
- Establish a learning environment while ensuring accountability and creativity;
- Value its personnel;
- Promote open communication, teamwork and a spirit of collegiality with a view to achieving a common goal;
- Respect the role and contribution of the military to Canadian society.

Individual Values

- Carry out work with integrity, professionalism, and loyalty;
- Promote communication, teamwork and respect for others;
- Respect the principles regarding confidentiality and absence of conflict of interest;
- Seek to develop knowledge and skills.

APPENDIX 2

BREAKDOWN OF GRIEVANCE FILES BY CATEGORY

Grievances by categories received from January 1 to December 31, 2003

FINANCIAL	# CASES
Benefits	11
Allowances	19
Allowances AND Other (e.g., charges for single quarters)	1
Pension	1
Benefits AND Allowances	1
Other (e.g. composite meal entitlement)	68
SUBTOTAL	**101**

GENERAL	# CASES
Policies AND Other (e.g., change in medical category from temporary to permanent)	1
Other career action	2
Reversion to lower rank	1
Other (e.g., breach of confidentiality)	5
SUBTOTAL	**9**

HARASSMENT/DISCRIMINATION	# CASES
Abuse of authority	9
Abuse of authority AND Other (e.g., release of confidential/ personal medical information)	2
Abuse of authority AND Racial	1
SUBTOTAL	**12**

RELEASE	# CASES
Misconduct	3
Medical AND Universality of Service	3
Service completed	1
Other (e.g., unsuitable for further service)	19
SUBTOTAL	**26**

GRAND TOTAL	148

APPENDIX 3

A SAMPLE OF CASE SUMMARIES

The following case summaries were chosen for the Board's annual report according to their level of interest and relevancy for the readership. How they might serve to inform key stakeholders about the grievance process or perhaps clarify labour relations issues were the primary considerations. However, given that the annual report also represents the year in review, two other criteria were also applied: the CDS either rendered a decision on the grievance in 2003 or the Board completed its review of the grievance in 2003.

Acronyms	Signification
C&P	Counselling & Probation
CDS	Chief of the Defence Staff
CF	Canadian Forces
CFAO	*Canadian Forces Administrative Orders*
CFPSA	Canadian Forces Personnel Support Agency
CFRETS	Canadian Forces Recruiting, Education and Training System
CHRC	Canadian Human Rights Commission
CO	Commanding Officer
DAOD	*Defence Administrative Orders and Directives*
DCCL	Director Claims and Civil Litigation
DMC	Director of Military Careers
DPPD	Director of Pay Policy and Development
IA	Initial Authority
IPC	Incentive Pay Category
MOC	Military Occupation
NDA	*National Defence Act*
NDHQ	National Defence Headquarters
P Res	Primary Reserve
PER	Performance Evaluation Report
QR&O	*Queen's Regulations and Orders for the Canadian Forces*
Reg F	Regular Force
RMC	Royal Military College
ROTP	Regular Officer Training Plan
RW	Recorded Warning
SI	Summary investigation
WO	Warrant Officer

Case Summary 1

Mess Dues

Upon returning from active duty, the grievor refused to pay dues to the Officers' Mess. Faced with an immediate administrative deduction, he voluntarily paid the sum of $1,242.54 although he had already filed a grievance.

The grievor pointed out that he did not want to frequent an establishment where people drank and smoked; on two occasions, he had started smoking again when he had been required to attend the mess, and he did not want to subsidize the consumption of alcohol.

The official from the CF Personnel Support Agency rejected the grievor's application, noting that the reason put forward by the grievor failed to justify his refusal to be a member of an establishment that fosters *esprit de corps* and camaraderie. An opting-out form could undermine the financial foundations of the mess, not to mention the spirit of solidarity that the mess tries to encourage.

The Board concluded that the association of the grievor with the Officers' Mess was mandatory in light of military traditions and regulations and that the grievor lacked legitimate reasons for opting out of the organization.

The Board concluded that the compulsory dues paid to the Officers' Mess did not contravene the *Charter of Human Rights and Freedoms*, the *Canadian Charter of Rights and Freedoms* or the *Canadian Bill of Rights*. The Board concluded that the grievor had been treated fairly when he concluded an agreement with his commanding officer and the mess to pay his late dues and that the reasonable application of the administrative deduction procedure to pay accounts owing was a legitimate measure that did not deprive the grievor of his rights.

The Board concluded that the Officers' Mess offered its members perfectly adequate services on an appropriate site and that the monthly dues of $23.01 were reasonable given the services offered. The Board issued a recommendation to the CDS that he reject the grievance.

The Board also recommended that the CDS issue appropriate directives to make the Officers' Mess comply with existing standards on smoking, if not already done, and adapt its facilities if necessary.

At the time of print, the CDS had not yet rendered a decision.

Case Summary 2

Harassment, Abuse of Authority

The grievor alleged that her unit had been plagued with personnel problems and that she and other members of the unit had been victims of harassment. Subsequently, the grievor submitted harassment complaints against four members of her unit.

The first complaint was against the grievor's immediate superior. The harassment and abuse of authority created a hostile environment, undermined the grievor's authority, and discriminated against her because of her trade and her status as a Reservist.

The second complaint was against the unit's Chief Warrant Officer whom the grievor alleged abused his authority, made offensive comments against women, and undermined the grievor's authority.

The third complaint was against the unit's non-commissioned member in charge of supply. The grievor alleged that he too undermined her authority and harassed h r during the unit's PER board for master corporals.

The fourth complaint was against a subordinate who, amongst other claims, felt the grievor out of dealing with subordinates' problems.

After receiving the grievor's complaints, the unit's CO ordered the conduct of an SI, but the grievor was not given a chance to rebut or fully explain her side of the incidents. During the grievance process, a second SI was held at a higher level. The grievor also contested the findings of that SI, which did not find that there was improper use of power that undermined the authority and performance of the grievor. The grievor contested the decision; she disagreed with the statements and testimonies of the SI and requested that the grievance be submitted to the CDS, along with 19 complaints on the following issues: lack of due diligence, SI process, harassment, discrimination, retaliation due to complaints and procedural fairness.

On the harassment issue, the Board concluded that harassment and abuse of authority regularly took place in the grievor's unit, and that the chain of command failed in its responsibilities not only towards the grievor, but towards all members of the unit; it failed to provide a work environment that is supportive of the productivity as well as the personal goals, dignity and self-esteem of all personnel.

The Board found that neither discrimination, nor discriminatory practices had taken place, and that there was insufficient evidence to prove that retaliation was used by the individuals against whom the grievor had initiated complaints. The Board did, however, find that the

grievor's PER over two years were suspect and recommended that one PER be rewritten, and that the other PER be re-evaluated. The Board also recommended that the CDS direct that financial compensation be given to the grievor.

At the time of print, the CDS had not yet rendered a decision.

Case Summary 3

Medical Treatment, Career Administration, Discretionary Referral

Less than five months after joining the CF, the grievor fractured his left tibia and fibula in compulsory physical training. One year later, the grievor had not completely recovered. The grievor stayed in the CF for another 16 years after and suffered the entire time, undergoing numerous surgeries before being medically released.

The grievor made several complaints regarding the medical mismanagement of his care and CF mismanagement of his career. The grievor also complained about the mismanagement of his records and about the grievance process.

The Board found that there had been failures on the part of the CF with regard to the grievor's care, such as delays in diagnosis and treatment, the provision of orthotics, the continuity of his care, the management of follow-up and the treatment of complications. In addition, the Board found the evidence showed that the medical facilities at the time of the grievor's surgery were not likely fully capable of caring for patients, especially those with long-standing and difficult injuries.

Regarding the grievor's complaints about career mismanagement, the Board found that there had been failures on the part of the CF and it recommended that the CDS apologize to the grievor.

The Board recommended that the CDS order a medical inquiry into the allegations of negligence. The Board also recommended that the CDS refer the case to the Minister of National Defence for consideration under the provisions of the *Injured Military Members' Compensation Act*.

At the time of print, the CDS had not yet rendered a decision.

Case Summary 4

Smoking in the Mess

During a regular meeting of the members of the Officers' Mess, the grievor tabled a motion to designate the main bar as a non-smoking area. The motion was seconded and approved by a majority of members present. The CO subsequently used his approval authority to reject the motion, alleging that the main bar was a place where business was transacted and that allowing people to smoke made it easier for them conduct routine business.

Five months later, during another regular mess meeting, the grievor tabled the same motion, which was carried by a majority of members present. The CO once again refused to approve the motion. In order to contest the CO's decision, the complainant filed a grievance. Six months after lodging the grievance, the grievor was released from the CF.

In reviewing the grievance, the Board analyzed three elements. First of all, with respect to the grievance process, the CO stated that the grievance was no longer valid because the grievor had been released. Under Section 29 of the *NDA*, however, the validity of a grievance depends specifically on the status of the grievor when the grievance was lodged. The Board concluded that the complainant's grievance was valid because he was a CF member at the time it was filed.

Secondly, the grievor alleged that the CO's refusal to approve the resolution banning smoking from the main bar was arbitrary and contrary to the wishes of the majority. The Board examined the regulations and policies governing the establishment of the Officers' Mess. The Board noted that the evidence on file did not lead them to conclude that the CO had acted in bad faith when he made his decision. Furthermore, according to the applicable policies and directives, the CO possessed the authority to reject a tabled motion.

The third element analyzed by the Board concerned tobacco usage in the Officers' Mess. According to DAOD 5020-1, "CF members shall not smoke in the workplace". The CO had mentioned that the Officers' Mess was occasionally used as a place of work. The Board concluded that based on available evidence CF members were performing job-related functions in the Officers' Mess and that, consequently, the mess could be considered a "workplace".

The Board issued a recommendation to the CDS asking him to order that the Officers' Mess be designated a non-smoking area so long as it remained a "workplace" and that DAOD 5020-1 be amended accordingly.

In his ruling, the CDS agreed with the Board's conclusions and recommendations. Although the CDS decided not to reverse the decisions of the CO, he was satisfied with the events and developments that had occurred since the grievance was filed, in particular the decision to make the Officers' Mess a non-smoking institution and to conduct a review of DAOD 5020-1, which represented an adequate and satisfactory response to the grievor's request that the Officers' Mess be designated a non-smoking area.

Pay on Transfer to Regular Force from Reserve

The grievor had worked as Class B and Class C in the Primary Reserve (P Res) as a medical assistant, in the rank of WO, before transferring into the Regular Force (Reg F) under an officer recruitment program. He had served ten years in the P Res on a part time basis.

At the time of his transfer, the grievor's pay was set at the basic level (Level C), monthly rate of $ 2, 267, for second lieutenant rank, which was substantially less than he had received as a non-commissioned member in the P Res. He filed a grievance, based initially on his understanding of vested rights, but in substance claiming that his experience and training were not reflected in his pay.

When the grievance was submitted to the IA, it was accompanied by a recommendation from the DPPD that the grievor be paid at the Level D rate and IPC 2, a monthly rate of $2, 848. This recommendation was not accepted by the IA, and the grievor submitted his grievance to the CDS. Subsequent to submitting his grievance to the CDS, the grievor stated that he was prepared to accept the resolution that had been recommended by the DPPD.

The Board found that there was inequitable treatment of the grievor in fixing his pay on transfer from the P Res to the Reg F. The Board found that the grievor was not given adequate recognition for his past service and experience when the payment terms were set in the terms of service for transfer to the Reg F. The Board also found that certain pay regulations applicable to transfer into officer classifications were not sufficiently clear to allow for proper recognition of P Res service.

The Board recommended that the grievance be upheld by retroactively increasing the grievor's pay to Level D, IPC 2 of second lieutenant. The Board also recommended that the CDS take measures to quickly complete the review of the CF pay structure and the regulations that deal with vested rights and former service, and initiate amendments to Queen's Regulations and Orders articles 204.21135 – *Pay, General Service Officers, Officer Candidate Training Plan (Former Service), Lieutenant, Second Lieutenant and Officer Cadet*; and 204.21535 – *Pay, Officers, Pilots, Officer Candidate Training Plan (Former Service), Lieutenant, Second Lieutenant and Officer Cadet*.

The CDS upheld the grievance.

Case Summary 6

Compulsory Release, Drug Policy, Release Item

A police officer found the grievor asleep in the driver's seat of his car in a parking lot, with the engine running and the headlights on. The police officer searched the grievor and found what was suspected to be a controlled substance. The police officer concluded that the grievor was intoxicated and placed him under arrest. The grievor was ordered to provide a urine sample to be tested for drugs, which he did. The result was negative, so the charge under the influence of drugs were withdrawn; however, two samples of the grievor's breath were taken and found to contain 155 mgs of alcohol per 100 mls of blood. As a result, he was charged on three counts of:

1. having the care and control of a motor vehicle while being impaired;
2. having the care and control of a motor vehicle while having consumed alcohol in excess of the legal limit; and
3. being in possession of a "controlled substance".

The grievor pleaded guilty, was fined $450 and was prohibited from driving for a year. His security clearance was revoked and he was put on C&P for a period of six months for misuse of alcohol.

A year later, the Acting CO ordered the grievor to report for control testing two days later as part of his C&P. The grievor reported for testing but refused to provide a urine sample. The Acting CO gave the grievor a formal Notice of Intent to Recommend Release-Drug Related Incidents, under the provisions of item 5(f) of QR&O 15.01. The grievor acknowledged the Notice but refused to sign, and applied for voluntary release.

The grievor was released under item 5(f)-*Unsuitable for Further Service*- following an administrative review conducted at NDHQ. This item applies to the release of an officer or non-commissioned member who, either wholly or chiefly because of factors within his control, develops personal weakness or behaviour or has domestic or other personal problems that seriously impair his usefulness to, or impose an excessive administrative burden on, the Canadian Forces. The grievor believed that he should not have been released under this item and sought to have it changed from a 5(f)-to a 4(e)-*Service Terminated for Other Causes*.

The grievor objected to his release, claiming that he had already been punished through the criminal process; he was tested for illicit drugs, which proved negative, had undergone a complete medical examination and had met with the Wing Drug and Alcohol Counselor who concluded that he was not an addict. He also attended a one-week Drug and Alcohol Prevention program and completed six months C&P for alcohol abuse.

The Board found that QR&O 20.12 – *Control testing* – did not give the CO the legal authority to order the grievor to undergo control testing, and therefore the order given was invalid. The refusal to follow an invalid order was the basis for recommending the release of the grievor, therefore the recommendation was invalid and without a valid recommendation on which to order the grievor's release, the release order from NDHQ was also invalid.

The Board recommended that the grievance be upheld and that the item under which the grievor was released be changed from item 5(f) to item 4(c) as per the grievor's request.

The CDS agreed with the Board's recommendation and directed that the grievor's release under item 5(f) be quashed and substituted with the release under QR&O 15.01, item 3(b)-*Medical*.

Case Summary 7

Voluntary Relinquishment of Rank

The grievor served with the CF for 18 years and then held the rank of WO for 5 years. The grievor asked a posting in order to be co-located with his service spouse and his request was granted. However, as a condition of his posting, the grievor was verbally informed that he must relinquish his rank of Warrant Officer and be posted as a Sergeant. The grievor submitted his request to voluntarily relinquish his rank, stating that this rank reversion was required of him.

Three years later, the grievor formally requested to be reinstated to his former rank of WO. The grievor's request was forwarded to the Director of Military Careers but two years following his request, the grievor had still not received the promotion. The grievor submitted a grievance on the matter, whereby he requested reinstatement to his former rank of WO, reinstatement of his lost seniority and back pay for his lost earnings during the time he completed service as a Sergeant.

When the grievor received notice that he was promoted to WO, he amended his grievance by withdrawing the request for reinstatement to the rank of WO, but maintained the issues regarding lost seniority and back pay. Furthermore, the grievor's promotion to WO did not take into consideration the five years that the grievor had already completed in this rank; thus, he also requested that this seniority be recognized in the second promotion to WO.

The primary issue in this case was whether the grievor was unjustly required to relinquish his rank of WO in order to be co-located with his service spouse. According to the Board, it was clear that the CF did not believe that it was possible to accommodate the grievor and

avoid a conflict of interest situation without requesting that he relinquish his rank of WO. The grievor clearly accepted the terms of his posting and did not present any complaint with respect to this requirement for a full three years. The grievor's request to relinquish his rank was for personal reasons, not related to military requirements. Thus, according to the relevant policy, the grievor could not be considered for promotion prior to his official request. Furthermore, there is clearly no provision for automatic reinstatement of a rank after a voluntary rank relinquishment.

The policies with respect to rank relinquishment are clear and have remained unaltered since 1991, therefore the Board found that the grievor was treated fairly and in accordance with policy when required to compete, through the merit list system, for his second promotion to WO. Consequently, the Board found that he was not entitled to back pay or seniority, at the rank of WO, for the time he was serving in the capacity of a Sergeant.

The other issue that the grievor raised is the fact that, upon his second promotion to WO in 1999, the grievor was not credited with his previous seniority at this rank. The CFAO 49-4 is silent on the issue of seniority upon promotion after rank relinquishment, as opposed to a rank reduction and the Board recommended that the CDS review the current promotion policy with a view towards establishing a mechanism by which the grievor's past experience and seniority in the rank of WO could be properly recognized upon his second promotion to that rank. A revision of the current policy to allow for such recognition of seniority could effectively enhance a CF member's quality of life by allowing them to better meet personal needs while minimizing the negative long-term career implications of a rank relinquishment.

The Board nonetheless recommended that the CDS deny the grievance with respect to the grievor's rank relinquishment and his request for back pay and seniority.

The CDS offered the grievor a higher rate of pay in recognition of his past seniority as a WO and as a result, he was awarded retroactive compensation.

Case Summary 8

Student Debts at Military College

After benefiting from five years of subsidized education at the RMC, the grievor requested release from the CF without completing his obligatory service. He alleged that his debt to the Crown of approximately $40,000 was excessive and failed to take into account his military service. In redress, the grievor requested a review of the amount claimed by the Crown plus financial compensation for the unjust and prejudicial treatment he had suffered.

First of all, the grievor contested the claim arising from the pay he had received from September to May of each year on the grounds that these periods were set aside for studies. He felt that time spent on mandatory military activities represented time "worked" comparable to work performed on his summer jobs and that consequently this time should not be factored into the amount claimed by the Crown. Secondly, the grievor felt that the pension funds he had accumulated over five years could not be applied towards his debt without his authorization. Thirdly, he claimed that the recruiting centre and chain of command had displayed a lack of good faith because they had failed to inform him that he could have enroled at RMC as a reservist. And fourthly, the grievor contended that the CF had refused his requests for a change in occupation without even forwarding them to the Career Manager, which he felt betrayed a lack of impartiality and professionalism. In his view, this omission was made even more glaring by the fact that he was a minor when he enroled.

The CO of the Canadian Forces Recruiting, Education and Training System rejected the grievance, noting that the grievor had understood the financial obligation associated with his voluntary release. The CO concluded that the sum of $40,000 was an accurate tally of the grievor's debt. This figure included the approximate $33,000 for pay received over five years of schooling, plus tuition costs, the cost of books and educational materials and the fees of the recreational club, which added up to more than $7, 500. The CO rejected the grievor's arguments surrounding his request to change his military occupation group, pointing out that the request had been examined by a Career Review Board on two separate occasions.

The Board concluded that the grievor had enroled of his own free will and had accepted the employment terms and conditions of the ROTP. The Board was not persuaded by the grievor's argument that an exception should be made in his case owing to special circumstances, and it concluded that the expenses incurred by the State for his training should be reimbursed.

As for the various activities that had taken place at RMC during the school year, the Board concluded that these were an integral part of the ROTP curriculum and could not be considered normal military work, as the grievor was claiming.

The Board concluded that the grievor had helped unduly prolong the resolution of this case and had not suffered unfair treatment warranting financial compensation.

The Board recommended the CDS deny the grievance, which he followed.

Case Summary 9

Harassment, Administrative Measures, Summary Trial Conviction

The grievor made a complaint of harassment against a superior. At the same time, that superior officer made a complaint to the grievor's CO about her conduct, specifically concerning the manner she had addressed him. The latter complaint resulted in the grievor being convicted by summary trial of "conduct to the prejudice of good order and discipline" contrary to section 129 of the NDA. She received a reprimand and was given a RW for the same conduct. She submitted a grievance contesting the disclosure of medical information, which in the grievor's view, constituted a violation of her privacy.

After the grievor was subsequently transferred, her posting PER reflected the measures that had been taken against her, and showed that her supervisor had lost confidence in her.

The grievor challenged all of the foregoing in this grievance, seeking relief for the "personal oppression and injustice" she had suffered. As redress, the grievor requested that: her summary trial be quashed; the PER be removed and destroyed; the RW she was given be removed from her file and destroyed; the annual leave she had to take due to the harassment suffered and the stress engendered thereby, be restored; an examination be made of the procedures followed during the investigation of her respective complaints when initially made; administrative and/or disciplinary action be taken against the parties involved; she be compensated for costs associated with pursuing her redress due to its complex and traumatic nature and; the letters from her supervisor be disclosed, removed from her file and destroyed.

Along with her grievance, the grievor lodged complaints with the CHRC regarding some of the same issues. According to procedures related to such matters, the grievance was suspended pending the outcome of the CHRC investigation. After settlement of some complaints and dismissal of others, the grievance was reactivated. It was then referred to the Board.

The Board viewed the matter as being broader than that which had been examined by the CHRC, and therefore viewed the grievance as involving live issues. It noted that, while the CF had apparently investigated the grievor's human rights complaints and had reached certain conclusions, none of the information related to this investigation had been provided to the Board with the grievance record. The Board noted the statutory obligation on behalf of the CDS to provide this information pursuant to paragraph 29.12(2)(c) of the NDA.

The Board found that the grievor's summary trial conviction should be quashed, because the Presiding Officer at the trial had not applied the requisite standard of proof, beyond a reasonable doubt, required to ground a conviction under the Code of Service Discipline. With regard to the grievor's complaints of harassment, the Board found that there had not been a full and proper investigation, but that it was not advisable to do one at this time. Too much time had passed since the events at issue, so the Board had determined to treat the

grievance record as it was, without occasioning further delay. Regarding the grievor's assertion of the impropriety of the administrative measures taken and the substance of her PER, the Board noted that the CF had apparently reached the conclusion that the RW and the PER should not stand. The Board did not find that there had been a violation of the grievor's privacy that would give rise to any remedy.

The Board recommended that the CDS implement the conclusions that had been reached regarding the PER and RW. It recommended that the CDS determine any impact these measures may have had on the grievor's career and that the summary trial be quashed.

At the time of print, the CDS had not yet rendered a decision.

Case Summary 10

Medical Release, Duty to Accommodate

The grievor enrolled in the CF and two years later, suffered an epileptic seizure. After detailed medical examinations, he was diagnosed with a congenital malformation of veins and arteries in the vision centre of his brain. He was removed from MOC training and returned to his unit. The grievor underwent surgery, following which his condition continued to be monitored and reviewed. He was placed on a temporary medical category and was posted supernumerary to positions in various units pending resolution of his medical case. The grievor was assigned a permanent medical category with certain employment limitations. The grievor was subsequently released from the CF.

The grievor contested the timing of his medical release from the CF. The issue was whether the grievor should have been granted a nine-month extension to his release date in order to qualify for an immediate, unreduced and indexed annuity under the *Canadian Forces Superannuation Act*.

The chain of command fully supported the grievor, but the IA denied the grievance on the basis that the medical release was appropriate and was conducted according to CF established policies. It was noted that the grievor was not MOC qualified.

The Board found that the Universality of Service Principle was correctly applied in the grievor's case and that the release decision was appropriate. However, it also found that, given the strong support for the grievor by the chain of command and pursuant to the *Guidelines on Retention of Members with Employment Limitations*, which were in effect at the time, the matter of the grievor's extension should have been referred to higher authority for consideration given his exceptional circumstances and despite his lack of MOC qualification. The

Board noted that although the grievor was not MOC qualified, he had been gainfully employed for nine years. The Board found that there appeared to be no career options available to address the grievor's situation, nor could the grievor have his release date amended administratively or be granted an annuity as he requested. The Board recommended to the CDS that those aspects of the grievance be denied. The Board did, however, recommend that based on his decision as to the merits of the grievance, the CDS refer the matter to the DCCL for consideration of a monetary settlement.

The CDS concurred that the grievor had been unfairly denied the extension. The CDS agreed with the Board's recommendation to refer the matter to DCCL. However, he also offered the grievor re-enrolment on a Fixed Period of Service to reach his career point, subject to certain conditions. The CDS directed the Assistant Deputy Minister-Human Resources (Military) to examine the accommodation policy and its administration regarding MOC qualified and non-MOC qualified members, to determine if it is appropriate and in keeping with CF values and the intent of the human rights law.

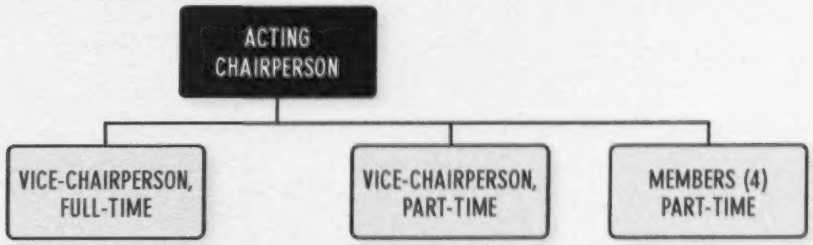
APPENDIX 4

PLANNED SPENDING TO MARCH 31, 2004
(IN DOLLARS)

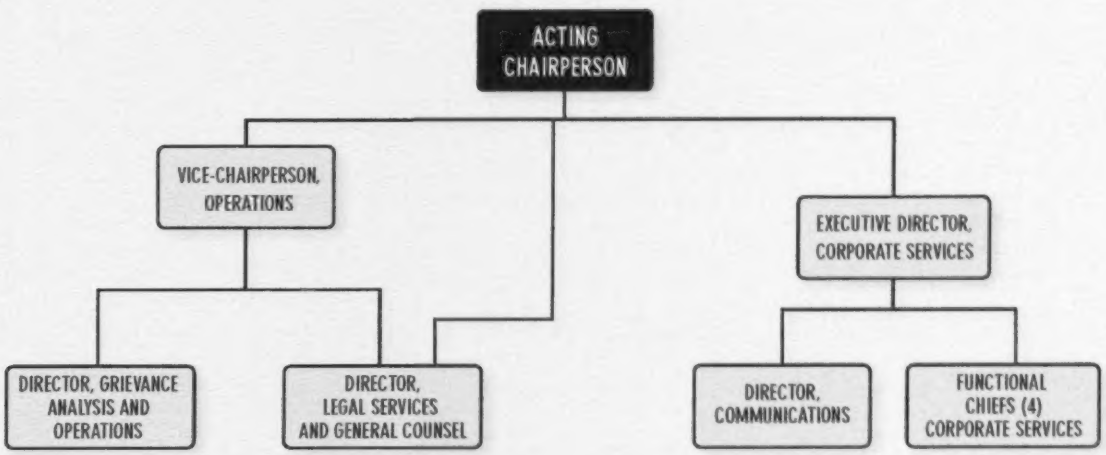
	Forecast
Salaries, wages and other personnel costs	3,350,000
Contribution to employee benefit plans	677,000
Subtotal	4,027,000
Other operating expenditures	2,698,000
Total planned expenditures	**6,725,000**

APPENDIX 5
ORGANIZATIONAL CHARTS*

THE BOARD MEMBERS



THE MANAGEMENT TEAM



* These charts represent the Board's organizational structure on December 31, 2003.

APPENDIX 6

BIOGRAPHIES

Diane Laurin
Chairperson

Diane Laurin was appointed Chairperson for the Canadian Forces Grievance Board on March 1, 2004. Ms. Laurin had been acting in this role since June 2, 2003, in addition to fulfilling her duties of full-time Vice-Chairperson, a position she had held since November 1, 1999.

Ms. Laurin is co-founder of the Board, the first administrative tribunal mandated to review military grievances referred to it by the Chief of the Defence Staff. In this capacity, she has been instrumental in developing the Board's operational infrastructure and has played a key role in the implementation of the new legislation (Bill C-25) and its regulations.

Prior to joining the Board, Ms. Laurin worked at the Montreal Urban Community (MUC) as a member of senior management for eleven years, four of which were spent at the Montreal Urban Community Police Service (MUCPS).

From 1987 to 1995, Ms. Laurin acted as Communications and Strategic Planning Advisor to the MUC President. In this capacity, she planned communications strategies that furthered the implementation of metropolitan policies in matters of public safety, public transit and economic development. She also participated in the preparation of many papers on issues such as crime prevention and law reform in police ethics.

Ms. Laurin was Assistant-Director and Chief of Staff to the Director of the Police Service from 1995 to 1998. She participated in major files involving citizen security, public morality and criminal activity, as well as intercultural and race relations. Some examples are the ice storm, the Stanley Cup riots, the motorcycle gang wars and the Barnabé Case.

She also took part in several projects touching upon collective agreement negotiations, work relations and professional ethics. She participated in a project called "Towards Neighbourhood Policing" which necessitated the re-engineering of the MUCPS and led the department to thoroughly review its mission and work practices.

Ms. Laurin began her career as a nurse, then obtained a Bachelor of Law degree from the University of Montreal (1982) and has been a member of the Quebec Bar Association since 1983. Ms. Laurin practiced immigration and civil law.

Ms. Laurin is member of the Canadian Bar Association and the Council of Canadian Administrative Tribunals; she is also on the board of directors for the Professional Development Centre for Members of Canadian Administrative Tribunals.

Kenneth E. Maxted was appointed as part-time Vice-Chairperson of the Board on May 31, 2001. Mr. Maxted, from Toronto, Ontario, has 30 years experience as a parish priest and 38 years of military service. During his military career, the Reverend Canon Maxted served for 10 years as a Regular Force Infantry Officer and 28 years in the Reserves, of which 15 were served as Chaplain. He also acted as Aide-de-Camp to four Lieutenant Governors of Ontario, and has served as Chaplain to several veterans' organizations. Mr. Maxted, a former member of the Canadian Pension Commission and the Veterans Review and Appeal Board, is an Officer of the Order of Military Merit and the recipient of, among others, the Korea Volonteer Service Medal, the United Nations Service Medal (Korea), the Centennial Medal and the Canadian Peacekeeping Service Medal.

Part-time Vice-Chairperson
Kenneth E. Maxted

Naomi Z. Levine was appointed as part-time Member of the Board on March 21, 2000. Ms. Levine, from Winnipeg, Manitoba, is a lawyer, ethicist, chartered mediator and workplace dispute consultant with extensive experience in conducting inquiries. She is also a harassment consultant for the University of Winnipeg and Red River College. As a lawyer, Ms. Levine has specialized in, among others, the areas of criminal, labour and corporate law. She obtained a Bachelor of Arts from the University of Winnipeg and a Masters of Arts and a Bachelor of Law from the University of Manitoba. She has a weekly radio column on Ethics and Law on CBC Winnipeg.

Part-time Member
Naomi Z. Levine

Wendy E. Wadden was appointed as part-time Member of the Board on March 31, 2000. Ms. Wadden, from Sydney, Nova Scotia, is a lawyer in private practice. She is an instructor in the School of Business and the School of Science and Technology at the University College of Cape Breton. She is member of the Nova Scotia Barristers' Society and the Cape Breton Barristers' Society. She is also a member of the board for a community organization known as "Second Chance", a program designed to assist in responding to family violence by helping the batterer. She obtained a Bachelor of Commerce (Honours) and a Bachelor of Law from Dalhousie University.

Part-time Member
Wendy E. Wadden

Michel Crowe was appointed as part-time Member of the Board on February 28, 2003. He studied law at the University of Montreal before being called to the Bar of Quebec in 1968. He served in the Canadian Armed Forces from 1962 until the year 2000, first with the Reserve Force for five years in the Canadian Officers Training Corps and as an infantry officer in the Regiment les Fusiliers Mont-Royal. He then transfered to the Regular Force as a military lawyer with the Office of the Judge Advocate General in 1967. Responsible for regional legal offices in Europe and Quebec, he served as Assistant Judge Advocate General in Lahr, Germany, as well as in the province of Quebec. Mr. Crowe appeared as counsel before the Court Martial Appeal Court and headed several sub-divisions of the Judge Advocate General head office at National Defense Headquarters. He also served as legal advisor for SHAPE (Supreme Headquarters Allied Powers Europe), participating in several international negotiations with NATO (North Atlantic Treaty Organization). Mr. Crowe taught civil law and the laws of war at the Collège Militaire Royal of Saint-Jean-sur-Richelieu, Quebec, and continues to teach military law. Throughout his military career, he has counselled on military grievances and is accredited as a mediator by the Bar of Quebec.

Part-time Member
Michel Crowe

On May 6 2003, Gwen Barbara Hatch was appointed as part-time Member. Ms. Hatch, from Winnipeg, Manitoba, is a partner with the law firm of D'Arcy & Deacon. She has extensive court experience, particularly in the areas of wills and estates and family law, and has appeared at all levels of court, including the Supreme Court of Canada. She has been in private practise since 1981. Ms. Hatch is very active in her community and professional associations, serving as Vice-Chair of the St. Boniface Hospital and Research Foundation, Courschead and Instructor for the Wills and Estates and Ethics Bar Admission Courses respectively for the Manitoba Law Society, and as a board member of Family Mediation Canada/Family Mediation Manitoba, Society of Trust and Estate Practitioners, and Sturgeon Creek United Church. She was also the recipient of the Queen's Golden Jubilee Medal in 2002.

Part-time Member
Gwen Barbara Hatch

Paul-André Massé was the Board's co-founder and served as its first Chairperson, from November 1, 1999 until June 2, 2003.

Born in Saint-Jean-sur-Richelieu, Mr. Massé is a graduate of l'Université de Montréal where he obtained a Master of Science degree (Political Science), and of the University of Ottawa where he pursued undergraduate studies in Public Administration, Political Science and Labour Relations.

Mr. Massé was a member of the Canadian Armed Forces (Regular and Reserves) from 1964 to 1973, following which he held positions in both Members of Parliament and Ministers' Offices.

A Member of Parliament for Saint-Jean from 1979 to 1984, Mr. Massé also served as Vice-Chair of the Labour, Manpower and Immigration Committee; and as member of the Standing Committees on External Affairs and National Defence; Agriculture; Public Accounts and Miscellaneous Estimates. Mr. Massé was also actively involved with Sub-Committees reviewing the NORAD Agreement (North American Aerospace Defence Command) and the

Former Chairperson
Paul-André Massé

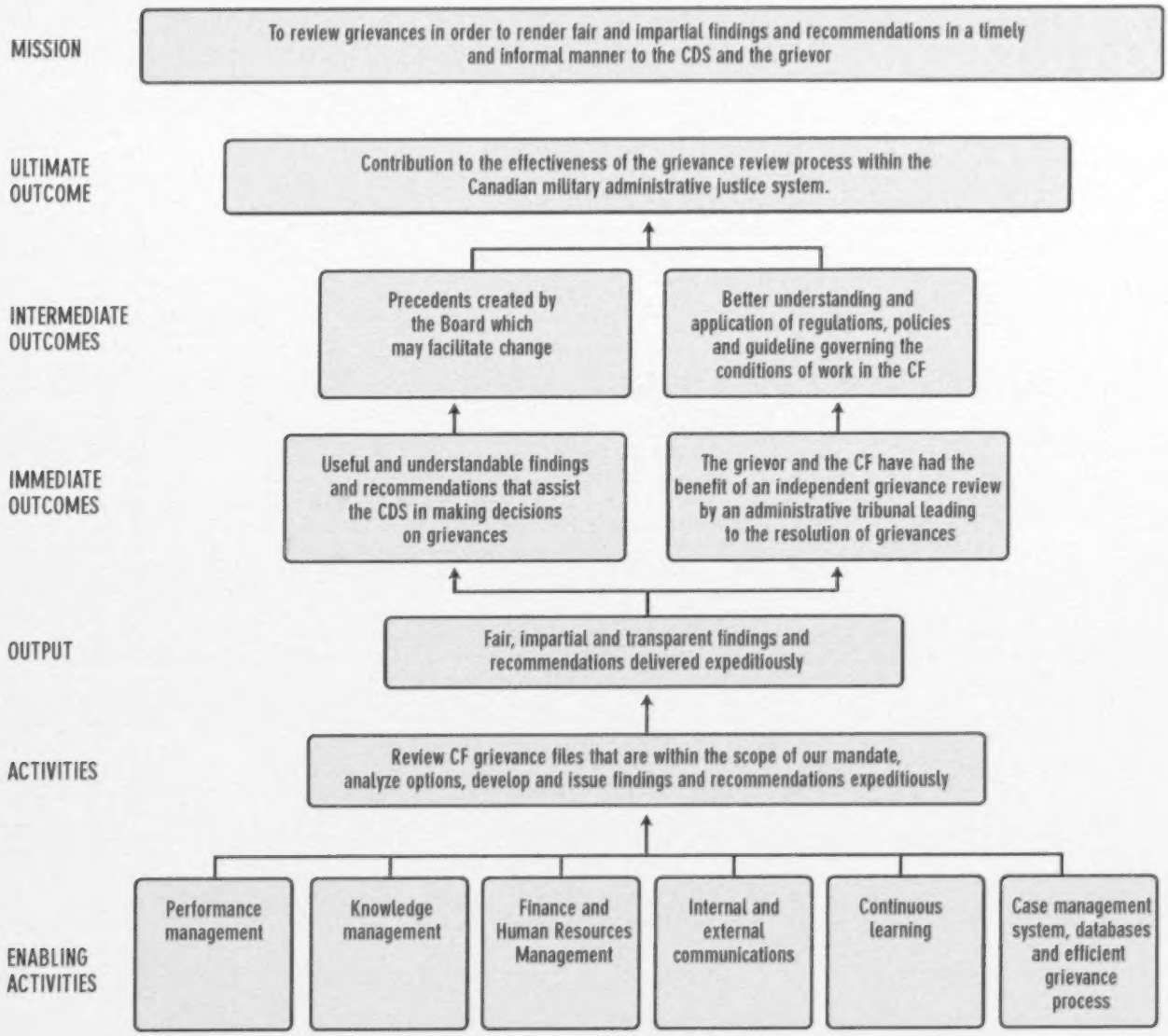
development of the Armed Forces Reserves. In 1983, he was appointed by the Prime Minister as Parliamentary Secretary to the Minister of Supply and Services and on many occasions, as member of Parliamentary Delegations, he represented Canada abroad particularly at NATO, SHAPE and NORAD.

From 1992 to 1994, Mr. Massé was a member of the Board of Directors of the Cegep de Saint-Jean-sur-Richelieu and a member of its Executive and Finance Committees.

Prior to his appointment as the Board's Chairperson, Mr. Massé managed his own consulting firm in the field of government relations.

APPENDIX 7

RESULTS CHAIN


MISSION
To review grievances in order to render fair and impartial findings and recommendations in a timely and informal manner to the CDS and the grievor
ULTIMATE OUTCOME
Contribution to the effectiveness of the grievance review process within the Canadian military administrative justice system.
INTERMEDIATE OUTCOMES
Precedents created by the Board which may facilitate change
Better understanding and application of regulations, policies and guideline governing the conditions of work in the CF
IMMEDIATE OUTCOMES
Useful and understandable findings and recommendations that assist the CDS in making decisions on grievances
The grievor and the CF have had the benefit of an independent grievance review by an administrative tribunal leading to the resolution of grievances
OUTPUT
Fair, impartial and transparent findings and recommendations delivered expeditiously
ACTIVITIES
Review CF grievance files that are within the scope of our mandate, analyze options, develop and issue findings and recommendations expeditiously
ENABLING ACTIVITIES
Performance management
Knowledge management
Finance and Human Resources Management
Internal and external communications
Continuous learning
Case management system, databases and efficient grievance process

APPENDIX 8

BOARD RECOMMENDATIONS AND THE LAMER REPORT

The following section provides additional interpretation relating to the five recommendations the Board made to the Right Honourable Antonio Lamer, and which were subsequently included in the report submitted to the Minister of National Defence: *The First Independent Review of the provisions and operation of Bill C-25*. The following numbered recommendations are taken directly from the report.

Recommendation #80

I recommend that the National Defence Act be amended to provide for reinstatement of Canadian Forces members who have been unjustly or wrongfully dismissed administratively.

This recommendation deals with entitlement to release of officers and non-commissioned members of the CF. Subsection 30(4) of the NDA allows the reinstatement of a member when he "has been released from the CF or transferred from one component to another by reason of a sentence of dismissal or a finding of guilty by a service tribunal or any court." This sentence, or finding, ceases to have force and effect as a result of a decision of a competent authority. A restrictive interpretation of this section, however, does not allow the reinstatement of a member who is unjustly or wrongfully released from the CF.

In the present circumstances, a member whose release is cancelled for a reason other than a vacating of a sentence or finding by a court must be re-enrolled. This may have financial consequences in terms of pension and salary as well as affecting the individual's conditions of employment. It may also restrict the power of CDS to award adequate compensation to a member who has been unjustly released.

The Board has rendered findings and recommendations along these lines in cases of wrongful releases. Furthermore, this situation does not reflect the labour relations situation in the Federal Public Service or in the private sector, where generally, the norm is to reinstate the employee and provide compensation in order to reflect the individual's situation prior to a wrongful dismissal.

Recommendation #81

I recommend that the Chief of Defence Staff be given the necessary financial authority to settle financial claims in grievances and that the Chief of the Defence Staff be entitled to delegate this authority.

This refers to section 29.11 of the NDA that identifies the CDS as the final authority in the grievance process. However, the CDS does not have the express authority to grant relief in the case of a claim against the Crown. Claims against the Crown fall instead within the authority of the Attorney General of Canada under the *Department of Justice Act*, the *Financial Administration Act* and related Treasury Board policies, such as the Treasury Board *Policy on Claims and Ex gratia Payments*. Since many grievances require such relief, this effectively undermines the integrity of the decision-making process. Without such authority, the CDS may have to refer the issue of financial compensation to a third party, i.e. the Director Claims and Civil Litigation at DND. The authority delegated by the Deputy Minister of DND must then be exercised in consultation with the Department of Justice. This recommendation aims at rectifying this situation.

Recommendation #85

I recommend that the National Defence Act be amended to provide authority for Canadian Forces Grievance Board members whose terms have expired to complete their caseloads.

There is at present no transitional measure that would allow Board Members who are not re-appointed at the end of their term of office to complete their work and the cases that were assigned to them. A number of other federal statutes include a provision that can be used to avoid such complications of an administrative and jurisdictional nature.

The Board recommended amending subsection 29.16(4) of the NDA by including a transitional provision that would enable Members who are not re-appointed to complete the cases that have been assigned to them.

Recommendation #86

I recommend that the National Defence Act be amended to require that the Canadian Forces Grievance Board provide an annual report within three months after the end of the fiscal year.

Section 29.28(1) of the NDA states that: "*The Chairperson shall, within three months after the end of each year, submit to the Minister a report of the activities of the Grievance Board during that year and its recommendations, if any*"

The Board, therefore, is required to submit an annual report of its activities on the basis of the calendar year while the government's budget planning is done on the basis of a fiscal year. This has a significant impact on the planning of the operational budgets and the allocation of the human and financial resources.

The Board recommended amending the subsection so that the date on which the annual report is tabled correlates to the activities completed during the fiscal year rather than the calendar year.

Recommendation #87

I recommend that the Canadian Forces Grievance Board be given a subpoena power.

The Board submitted a recommendation that it be granted subpoena powers, without having to hold a hearing, if it needs to obtain information from a witness as it was referred to in *Canadian Pacific Air Lines Ltd. v. Canadian Air Line Pilots Assn.*" Currently, the Board must hold a hearing in order to compel the production of documents, testimony or items, the disadvantages of which include unnecessary costs and possible delays. Not having to hold a hearing would also be consistent with its mandate and complement the CF's statutory obligation under subsection 29.12(2) of the NDA.

The Canadian Forces Grievance Board in general supports the recommendations contained in the Lamer Report tabled by the Minister of National Defence as it pertains to the grievance process, as they would improve the legislation. Further to this, the implementation of these specific recommendations would greatly assist the Board in the execution of its legislative mandate.

" [1993] 3 S.C.R. 724.

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